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| APPLICATION NO. 09/005,497 | FILING DATE 01/12/98 | FIRST NAMED INVENTOR MORANDO | ATTORNEY DOCKET NO. MJV-108-B |
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IM41/0208

EXAMINER
KASTLER, S

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| ART UNIT 1742 | PAPER NUMBER |
|------------------|--------------|

DATE MAILED: 02/08/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

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|------------------------------|--------------------------------------|--------------------------------|
| Office Action Summary | Application No. 09/005,497 | Applicant(s) Morando |
| | Examiner Scott Kastler | Group Art Unit 1742 |

Responsive to communication(s) filed on _____.

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

Claim(s) 1-36 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

Claim(s) 1-36 is/are rejected.

Claim(s) _____ is/are objected to.

Claims _____ are subject to restriction or election requirement.

Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on _____ is/are objected to by the Examiner.

The proposed drawing correction, filed on _____ is approved disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All Some* None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) _____.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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Specification

1. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 13 is rejected under 35 U.S.C. 102(b) as being anticipated by the admitted prior art of the instant disclosure. The admitted prior art of the instant disclosure, as expressed in the "jepson" type preamble of instant claim 1 for example, shows all aspects of the above claim.

4. Claims 1-4, 6-10, 12-16 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Areaux. Areaux, in the embodiments of the figures for example, teaches a molten metal pump an method of operation showing all aspects of the above claims.

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Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art of the instant disclosure. The admitted prior art of the instant disclosure, as expressed at pages 1-2 of the specification and in the jepson type preambles of claim 1 shows all aspects of the above claims except the placement of the molten metal inlets coaxially or laterally with respect to the flow of gas flowing through the pump of any particular metal lifting passage configuration (tapering of including a convergent/divergent nozzle shape). However, the subject matter as a whole would have been obvious to one of ordinary skill in the art at the time the invention was made because it has been well settled that when, as in the instant case, a prior art apparatus performs substantially the same function in substantially the same manner as that claimed motivation either to shift the location of a component (the molten metal entry ports) or the shape of a component (the metal lifting passage) without any showing that such changes materially affect the operation of the apparatus, would have been modifications obvious to one of ordinary skill in the art at the time the invention was made. See *In re Japikse*, 86 USPQ 70 (shifting component locations) and *In re Dailey*, 149 USPQ 47 (altering the shape or configuration of a component).

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Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Areaux et al, Morando'650, and Morando'314 are also cited as further examples of prior art molten metal pumps.
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Kastler whose telephone number is (703) 308-2506.

sk

February 3, 1999


SCOTT KASTLER
PRIMARY EXAMINER

~~703-308-2506~~